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10/681,007	10/08/2003	Antonio Criminisi	MS1-1631US	6670
22971	7590	07/28/2009	EXAMINER	
MICROSOFT CORPORATION ONE MICROSOFT WAY REDMOND, WA 98052-6399				LIEW, ALEX KOK SOON
ART UNIT		PAPER NUMBER		
		2624		
NOTIFICATION DATE			DELIVERY MODE	
07/28/2009			ELECTRONIC	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

roks@microsoft.com  
ntovar@microsoft.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/681,007	CRIMINISI ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ALEX LIEW	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 06 May 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-45 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

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1. The amendment filed on 5/6/09 is entered and made of record.

**2. Response to applicant's arguments**

I. On page 14, the applicant stated:

"In this response the Applicant respectfully maintains the assertion that Buhrke is inapplicable as a reference. First of all, the Applicant notes that Buhrke is directed to the area of speech recognition while Roy and the present claims are directed to the area of image processing. As such the Applicant respectfully submits that one of ordinary skill in the art of image processing would not consider a teaching in the speech recognition arts as relevant to image processing ... Thus, the Applicant respectfully submits that as there is no rational reason to combine the references, the present claims are non obvious over the combination of Roy and Buhrke."

The examiner does not agree; the references Roy (US pat no 6,046,763) and Buhrke (US pat no 6,006,181) are combinable because both are under the field of pattern recognition. The only difference between image and speech recognition is image recognition captures information in two dimensional and speech recognition captures information in one dimension. The processing of these two are the same, for example one can use the convolution operation to manipulate/change the signal.

II. On page 15, the applicant stated:

"Even assuming *arguendo* that there is a rational reason to combine the Roy and Burke references, the Applicant respectfully submits that the cited combination fails to

disclose all of the features of the claims in their entirety. Specifically, claim 1 as amended recites "... a geometric three plane model for dynamic programming." The current amendment does not overcome or distinguish over cited references because Buhrke reads on "a geometric three plane model for dynamic programming (see figure 2, each plane are shaped either as a rectangular shape or square shape)." The examiner suggests making amendments which closely resemble the disclosure in figures 6-10, 14 and 15 to closely capture the dynamic programming use to improve occluded region in stereo images, which is discussed in the invention.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-15 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. Supreme Court precedent<sup>1</sup> and recent Federal Circuit decisions<sup>2</sup> indicate that a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. While the

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<sup>1</sup> *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

<sup>2</sup> *In re Bilski*, 88 USPQ2d 1385 (Fed. Cir. 2008).

instant claim(s) recite a series of steps or acts to be performed, the claim(s) neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. Claims 1-15 are method claims which are not tied-to any processor or computing device.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
2. Claims 1, 2, 4, 5, 31, 32, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy (US pat no 6,046,763) in view of Bahrke (US pat no 6,006,181).

With regards to claim 1, Roy reads on a method comprising: computing a minimum cost path in a stereo disparity model between a scan line of a first image and a corresponding scan line of a second image of a stereo image pair (see figure 1, the left diagram shows two axis, horizontal axis being line from the first image and vertical axis being line from the second image, discussed on column 4 lines 43 to 47 and lines 61-66), the stereo disparity model distinguishing between non-fronto-parallel matched pixels in each scan line and occluded pixels in each scan line (see column 5 lines 43 to

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67, reg(u,v) is reads as the non-fronto-parallel pixels and occ(u,v) is read as the occluded pixels).

Roy does not disclose 'using a three-layer graph for dynamic programming.' Buhrke discloses using a three plane model for dynamic programming (see figure 2 and column 3, lines 54-57). One skilled in the art would include dynamic programming because to allow building object pattern models to be match, to improve recognition of the object in the image.

With regards to claim 2, Roy reads on a method of claim 1, wherein the computing operation comprises computing matching costs for each pixel of each scan line pair (see figure 13, element 1340, the depth map is computed for the entire image, which includes every lines in the images).

With regards to claim 4, Roy reads on a method of claim 1, wherein the computing operation comprises altering the matching costs for at least one pixel pair based on whether the pixel pair is determined to be associated with a non-fronto-parallel surface or an occlusion (see column 7, lines 34 to 40).

With regards to claim 5, Roy reads on a method of claim 1, wherein the computing operation comprises determining a minimum cost path in the stereo disparity model (see equation on column 5, lines 45 to 53, is a disparity model).

With regards to claim 31, see the rationale and rejection for claim 1.

With regards to claim 32, see the rationale and rejection for claim 2.

With regards to claim 34, see the rationale and rejection for claim 4.

With regards to claim 35, see the rationale and rejection for claim 1.

3. Claims 3 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) as applied to claim 1, further in view of Chupeau (US pat no 5,727,078).

With regards to claim 3, Roy and Buhrke disclose all the limitations in claim 1, but do not disclose computing matching costs for each pixel of each scan line pair using a windowed matching cost function. Chupeau discloses computing matching costs for each pixel of each scan line pair using a windowed matching cost function (see column 6, lines 20 to 27). One skilled in the art would include windowed matching cost function because to located the desired object in the image in the pair stereo images, to compute the disparity and depth of the object; this leads to computing the three dimensional image of the object which gives more details.

With regards to claim 33, see the rationale and rejection for claim 3.

4. Claims 6 – 10 and 36 - 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) as applied to claim 1 further in view of Usami (US pat no 4,982,438).

With regards to claims 6 to 8, Roy and Buhrke disclose all the limitations discussed in claim 1, but do not disclose applying a cost penalty to move from an occluded pixel pair to a matched pixel pair.

However, Roy suggests, treating occlusion pixels by changing the edge capacities specific to a different match, such as matching any set of pixels to another set of occlusion pixels or non-occlusion pixels (see column 7, lines 36 to 39, the change in the edge capacities reads on applying a cost penalty). Usami discloses plurality of penalty costs (see figure 12a, S1, S7, S13, S19, S25, are the plurality of penalty; also see column 8, lines 31 to 37).

One skilled in the art would include applying a cost penalty because to determine if the current pixel matches with a background pixel or foreground pixel, which improves on matching method to create a more accurate stereoscopic image.

With regards to claim 9, Roy and Buhrke disclose all the limitations in claim 1, but do not discloses applying second penalty cost. Usami discloses applying a first cost penalty to a move from an occluded pixel pair to another occluded pixel pair (see figure 12A, S13 is the first cost penalty; also see column 8, lines 31 to 37); and applying a

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second cost penalty to a move from a matched pixel pair to an occluded pixel pair, the first cost penalty being different than the second cost penalty (see figure 12A, S1 is the first cost penalty; also see column 8, lines 31 to 37, S1 and S13 are located at different nodes). One skilled in the art would include applying a cost penalty because to determine if the current pixel matches with a background pixel or foreground pixel, which improves on matching method to create a more accurate stereoscopic image.

With regards to claim 10, Roy and Buhrke disclose all the limitations in claim 1, but do not discloses applying second penalty cost. Usami discloses applying a first cost penalty to a move from an occluded pixel pair to another occluded pixel pair (see figure 12A, S13 is the first cost penalty; also see column 8, lines 31 to 37); and applying a second cost penalty to a move from a matched pixel pair to an occluded pixel pair, the first cost penalty is less than the second cost penalty (see figure 12A, S1 is the first cost penalty; also see column 8, lines 31 to 37, S1 and S13 are located at different nodes, S1 being the older path). One skilled in the art would include applying a cost penalty because to determine if the current pixel matches with a background pixel or foreground pixel, which improves on matching method to create a more accurate stereoscopic image.

With regards to claims 36 – 38, see the rationale and rejection for claims 6 – 8.

With regards to claims 39 and 40, see the rationale and rejection for claims 9 and 10.

5. Claims 11, 12, 14, 15, 41, 42, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) as applied to claim 1, further in view of Chen (US pat no 6,556,704).

With regards to claim 11, Roy and Buhrke disclose all the limitations discussed in claim 1, and also discloses a disparity of the corresponding pixels being characterized by a minimum cost path of the stereo disparity model (see equation on column 5, lines 45 to 53, is a disparity model), but do not disclose computing a cyclopean virtual image. Chen discloses computing a cyclopean virtual image scan line based on corresponding pixels of scan lines of the first and second images (see figure 1, element 13a and 13b are the first and second image, respectively, and the depth map, 10, is read as the virtual image). One skilled in the art would include computing a cyclopean virtual image because to create a three-dimensional image, where this three-dimensional image shows more details on the object in the image, which improves recognition of the object in the image.

With regards to claim 12, Roy and Buhrke disclose all the limitations discussed in claim 1, but do not disclose computing a cyclopean virtual image. Chen discloses computing a cyclopean virtual image scan line based on corresponding pixels of scan lines of the first and second images (see figure 1, element 13a and 13b are the first and second image, respectively, and the depth map, 10, is read as the virtual image), wherein

corresponding pixels that are matched are projected as a virtual pixel onto cyclopean virtual image scan line (see figure 1, the depth map are the result from first and second images' projection). One skilled in the art would include computing a cyclopean virtual image because to create a three-dimensional image, where this three-dimensional image shows more details on the object in the image, which improves recognition of the object in the image.

With regards to claim 14, Roy and Buhrke disclose all the limitations discussed in claim 1, but do not disclose computing a cyclopean virtual image. Chen discloses computing a cyclopean virtual image scan line based on corresponding pixels of scan lines of the first and second images (see figure 1, element 13a and 13b are the first and second image, respectively, and the depth map, 10, is read as the virtual image), wherein a non-occluded pixel of an occluded pair of corresponding pixels is projected as a virtual pixel onto the cyclopean virtual image scan line from a background disparity in the stereo disparity model (see figure 1, the top and bottom image contains occluded pixels, read as the person in the image, and non-occluded pixels, read as the foreground; both images are matched using disparity method and the projected depth image is shown in the depth image, which is read as virtual image). One skilled in the art would include computing a cyclopean virtual image because to create a three-dimensional image, where this three-dimensional image shows more details on the object in the image, which improves recognition of the object in the image.

With regards to claim 15, Roy and Buhrke disclose all the limitations discussed in claim 1, but do not disclose computing a cyclopean virtual image. Chen discloses computing a cyclopean virtual image scan line based on corresponding pixels of scan lines of the first and second images (see figure 1, element 13a and 13b are the first and second image, respectively, and the depth map, 10, is read as the virtual image), wherein a value of a non-occlusion pixel of an occluded pair of corresponding pixels is selected as a value of a resulting virtual pixel on the cyclopean virtual image scan line (see figure 1, the occluded pixels are those that belong to the object image and non-occluded pixel belongs to the background; both the top and bottom images are used to generating the depth image, which is read as the virtual image). One skilled in the art would include computing a cyclopean virtual image because to create a three-dimensional image, where this three-dimensional image shows more details on the object in the image, which improves recognition of the object in the image.

With regards to claim 41, see the rationale and rejection for claims 11.

With regards to claim 42, see the rationale and rejection for claims 12.

With regards to claim 44, see the rationale and rejection for claims 14.

With regards to claim 45, see the rationale and rejection for claims 15.

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6. Claims 13 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) as applied to claim 1, further in view of Anandan (US pat no 6,198,852).

With regards to claim 13, Roy and Buhrke disclose all the limitations discussed in claim 1, but do not disclose averaging pixels to obtain virtual pixels. Anandan discloses computing a cyclopean virtual image scan line based on corresponding pixels of the scan lines of the first and second images (see figure 10, element 1070 is read as the virtual image, and see figure 5 and figure 6, are the first and second images), wherein corresponding pixels that are averaged to determined a value of a resulting virtual pixel on the cyclopean virtual image scan line (see column 18, lines 63 to 66). One skilled in the art would include averaging pixels to obtain virtual pixels because to obtain a value closest to the actual value, improving the three-dimensional generation of the object in the image.

With regards to claim 43 see the rationale and rejection for claim 13.

7. Claims 16, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) and Yoshigahara (US pat no 7,015,951).

With regards to claim 16 see the rationale for claim 1. In addition, Roy and Buhrke do not disclose three-plane-model including a right occluded plane, left occluded plane and a matched plane. Yoshigahara discloses three-plane model including a right occluded plane, a left occluded plane and a matched plane (see figure 11, the left and right images are occluded by the tree like object, the virtual image is read as the ‘matched image’). One skilled in the art would include step of generating a virtual image because to find matching points between left and right image in order to obtain a three dimensional image.

With regards to claim 17 see the rationale for claim 2.

With regards to claim 19 see the rationale for claim 4.

With regards to claim 20 see the rationale for claim 1.

8. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) and Yoshigahara ('951) as applied to claim 16 further in view of Chupeau (US pat no 5,727,078).

With regards to claim 18, see the rationale for claim 3.

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9. Claims 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) and Yoshigahara ('951) as applied to claim 16 further in view of Usami (US pat no 4,982,438).

With regards to claims 21 – 23, see the rationale and rejection for claims 6 – 8.

With regards to claims 24 and 25, see the rationale and rejection for claims 9 and 10.

10. Claims 26, 27, 29, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) and Yoshigahara ('951) as applied to claim 16 further in view of Chen (US pat no 6,556,704).

With regards to claim 26, see the rationale and rejection for claims 11.

With regards to claim 27, see the rationale and rejection for claims 12.

With regards to claim 29, see the rationale and rejection for claims 14.

With regards to claim 30, see the rationale and rejection for claims 15.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roy ('763) in view of Buhrke ('181) and Yoshigahara '951 as applied to claim 1, further in view of Anandan (US pat no 6,198,852).

With regards to claim 28 see the rationale and rejection for claim 13.

### **Conclusion**

**This action is made final.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shorten statutory period for reply to this final action is set to expire three months from the mailing date of this action. In the event a first reply is filed within two months of the mailing date of this final action and the advisory action is not mailed until after the end of the three-month shorten statutory period, then the shorten statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however will the statutory period for reply expire later than six months from the mailing date of the final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALEX LIEW whose telephone number is (571)272-8623 or cell (917)763-1192. The examiner can be reached anytime.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Matthew C Bella/  
Supervisory Patent Examiner, Art  
Unit 2624

/Alex Liew/  
AU2624  
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